

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8429 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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M/S. TRADOXY ENTERPRISE

Versus

DEVENDRA C. BHATT

Appearance:

1. Special Civil Application No. 8429 of 2001
MR MIHIR H JOSHI for Petitioner No. 1
MR YH VYAS for Respondent No. 1
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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 09/04/2002

ORAL JUDGEMENT

By this petition under Article 226 and 227 of the Constitution, the petitioner has challenged the award of the Labour Court, Ahmedabad in Reference (LCA) No.2090/87, whereby the respondent is awarded

reinstatement with full backwages and cost of Rs. 500/-.

2. The broad facts about which there is no dispute is that at the time of alleged illegal termination of service of the respondent on 30.6.1987, there was in operation an order appointing him on probation for a period of 3 months. It was the case of the respondent before the Labour Court that even before the issuance of appointment orders on probation in December, 1996 and February, 1987, he had been employed by the firm of the petitioner which was run in different names at the same address. The learned Counsel for the respondent fairly conceded that except his bare word on oath before the Labour Court, there was no evidence whatsoever suggesting any kind of employment of the respondent under any of the firms connected with or run by the petitioner and therefore, the only documentary evidence as regards the service period and the conditions of service were two appointment orders which expressly appointed the respondent on probation for a period of 3 months.

3. The impugned award of the Labour Court is based on two premises, namely, that two firms in whose name the appointment orders were issued were one and that the respondent had worked for a period of two years. The findings are challenged as being perverse. Even assuming that the firms run by the respondent in several names were one and the same, the contract of service proved before the Labour Court was one for a limited period and on probation. Remarkably, the Labour Court has not categorically drawn a conclusion in the impugned award that any of the provisions of the Industrial Disputes Act was violated when the service of the respondent came to be terminated in terms of the conditions contained in the appointment orders. Therefore, the finding that all the four firms of the petitioner were one and the same or that the defence of the petitioner was contradictory, in so far as certificate of satisfactory service issued by the petitioner could not have entitled the respondent to an order of reinstatement with full backwages for a period of almost 14 years.

4. It is obviously not a case of retrenchment in violation of the provisions of Section 25F but, instead appears to be a case covered by the exception to the definition of 'retrenchment' as given in Sec. 2(oo)(bb) of the ID Act.

5. In view of the entire set of evidence on record and considering the arguments of the learned Counsel, the findings as regards continuous service by the respondent

for two years is found and held to be perverse and the termination at the end of period of probation is held to be legal, which disentitles the respondent from any relief. Accordingly, the petition is allowed and the impugned award and order is set aside. Rule is made absolute with no order as to costs.

(D.H.Waghela, J.)

*/Mohandas